

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JAMES H. CLARK,)
)
 Plaintiff,)
)
 v.) No. 4:07CV1133 DJS
)
 LASHLY & BAER, P.C., et al.,)
)
 Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's motion for reconsideration and relief from judgment. The motion will be denied.

Plaintiff filed his complaint and motion to proceed in forma pauperis on June 14, 2007. On June 15, 2007, the Court dismissed the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B), finding it to be frivolous and malicious. Plaintiff did not file a notice of appeal.¹ In the instant motion, plaintiff moves the Court for relief from judgment on the basis that the Court committed legal error in dismissing the complaint.

¹ The instant motion, filed on July 3, 2007, is untimely if seeking relief under Rule 59, and so did not extend the time for filing a notice of appeal pursuant to Fed.R.App.P. 4(a)(4). If construed as seeking relief under Rule 60, the motion was similarly untimely for the purpose of extending the time for a notice of appeal pursuant to Fed.R.App.P. 4(a)(4). Plaintiff has therefore failed to timely file a notice of appeal of the dismissal of his action.

Under Rule 60(b), the Court may grant relief from the judgment “for any other reason justifying relief.” Fed. R. Civ. P. 60(b). However, “[a]bsent extraordinary circumstances, Rule 60(b)(6) motions cannot be used to remedy a failure to take an appeal.” Chambers v. Armontrout, 16 F.3d 257, 261 (8th Cir. 1994). Plaintiff could have appealed the dismissal of the complaint but did not do so. And plaintiff does not allege that extraordinary circumstances prevented him from timely filing a notice of appeal. As a result, the motion will be denied.

Additionally, irrespective of whether plaintiff could have timely filed an appeal or whether extraordinary circumstances exist, the Court has reviewed the motion and finds that it lacks merit. Consequently, it should be denied as baseless.

Accordingly,

IT IS HEREBY ORDERED that plaintiff’s motion for reconsideration and relief from judgment [Doc. #9] is **DENIED**.

IT IS HEREBY CERTIFIED that an appeal from this Order would not be taken in good faith. 28 U.S.C. § 1915(a)(3).

Dated this 12th day of September, 2007.

/s/Donald J. Stohr

UNITED STATES DISTRICT JUDGE